Filed 12/15/20 Eigenbrodt v. Phillips CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

SUSAN EIGENBRODT et al., as Trustees, etc., Plaintiffs and Appellants, v. R. STEVEN PHILLIPS et al., Defendants and Respondents.	B302376 (Los Angeles County Super. Ct. No. BC607894)

APPEAL from a judgment of the Superior Court of Los Angeles County. Anthony Mohr, Judge. Affirmed.

Akerman, Michael R. Weiss and Jonathan M. Turner for Plaintiffs and Appellants.

Leonard, Dicker & Schreiber and Richard C. Leonard for Defendants and Respondents.

Susan Eigenbrodt, William Thomas Eigenbrodt, and Eric Arthur Eigenbrodt, trustees of the R.A. and Doris Eigenbrodt Family Trust dated March 17, 1999 (Eigenbrodt trust) (collectively "appellants"), appeal from a judgment entered after a Code of Civil Procedure section 638 hearing which resolved competing claims between appellants and R. Stephen Phillips (Phillips), Rosemead Warehouse Partnership (partnership), and Limited Partners (collectively "respondents") regarding the interpretation of a partnership agreement and the validity of former general partner Robert Eigenbrodt's (Eigenbrodt) purported transfer of his general partnership interest. Appellants' primary arguments are that (1) the trial court erred in its interpretation of conflicting provisions of the partnership agreement; and (2) the trial court erred in concluding that the Eigenbrodt trust was not a general partner at the time of Eigenbrodt's death.

The referee properly considered and weighed conflicting extrinsic evidence and inferences in resolving the disputed issues between the parties, and substantial evidence supported the decision which was made a judgment of the court. Therefore, we affirm the judgment.

FACTUAL BACKGROUND

Formation of the partnership

The partnership was formed in 1978 pursuant to a written limited partnership agreement. The partnership was created to "acquire, construct, own, maintain, operate, lease and hold for capital appreciation and maximum current income a mini-warehouse" in Rosemead, California. The partnership originally had two general partners, David Sanders and Douglas Grim. In addition, Theodore H. Bentley owned a one-third financial

interest in the general partnership even though he did not exercise any of the management power of a general partner. The storage facility was known as "Stor-Mor Self Storage."

Certain provisions of the partnership agreement provided as follows:

> "10.2 Allocation Among Partners. Distributions of Cash Available for Distribution shall be allocated such that there shall be distributed to the Limited Partners sixty four percent (64%) of the Cash Available for Distribution and the balance of Cash Available for Distribution shall be distributed to the General Partners . . . ."
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> "11.1 Management. The General Partners shall conduct the business of the Partnership and shall devote to the business affairs of the Partnership such time and effort as the General Partners may from time to time deem to be in the best interest of the Partnership.
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> "11.2 Powers of the General Partners. The General Partners shall have full charge of overall management, conduct and operation of the Partnership in all respects and in all matters, and shall have the authority to act on behalf of the Partnership in all matters respecting the Partnership, its business and its property . . . ."
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> "17.1 General Partners' Interest. So long as the General Partners remain as the general partners

of the Partnership, they shall not sell, transfer, assign or otherwise dispose of their interest as General Partners in the Partnership or in its capital, earnings, assets or property."

"21.1 Dissolution. Except as otherwise provided . . . no Partner shall have the right to cause dissolution of the Partnership before the expiration of the term for which it is formed. The Partnership shall be dissolved and terminated upon the happening of the following events: . . .

"c. The retirement, withdrawal, adjudication of bankruptcy or insolvency or dissolution of either general Partner unless, within a period of ninety (90) days from the date of such event, a successor General Partner is elected by the Limited Partners . . . .

"d. The removal of either General Partner, unless prior to the effective date of such expulsion a successor General Partner is elected by the Limited Partners as provided in Section 21.2 hereof . . . ."

"21.3 Appraisal of the General Partners' Interest. Upon the retirement, withdrawal, removal, dissolution, insolvency or bankruptcy (or death or insanity, in the case of an individual General Partner) of the General Partners, or any of them, and the continuation of the Partnership (any of these events being hereinafter referred to in this Section

21.3 as a 'termination') . . . there shall be determined the then present fair market value of the terminated General Partner's interest. . . . Upon the determination of the present value of the terminated General Partner's interest, the Partnership forthwith shall either (a) pay to the terminated General Partner in cash an amount equal to one-hundred percent (100%) of the present fair market value of the interest so determined, . . . or (b) convert the interest as determined above of the terminated General Partner to a limited partner's interest in the ratio that the value of the terminated General Partner's interest bears to the value of all Partners' interests as of the appraisal date."

"23.3 Amendment. This Agreement may be amended, modified and changed by a Majority Vote, except as otherwise limited herein."[1]

Changes to the partnership

In 1980, an amendment to the partnership agreement was approved by the limited partners removing Grim as a co-general partner and providing that Sanders, the remaining general partner, would be the sole general partner of the partnership. In connection with Grim's removal, on November 17, 1980, Sanders and Grim entered into a "Conveyance, Release, and Assumption

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[1] Pursuant to Section 5.12, "Majority Vote" means "the affirmative vote of Limited Partners then owning of record more than seventy five percent (75%) of the outstanding Units of the Partnership." General partners had no voting rights.

Agreement." The agreement provided, in part, that "[p]ursuant to the provisions of Section 21.3 of the Partnership Agreement, Sanders caused an appraisal to be made of Grim's general partnership interest in Rosemead, and as a result thereof it was determined that Grim's interest as of the time of his removal as a general partner had a fair market value of $21,616. The agreement further provided:

> "(g) Grim desires to sell his interest in Rosemead to Sanders for the sum of $20,000 in cash and the assumption by Sanders of Grim's obligations to United California Bank, as aforesaid, and Sanders is desirous of acquiring Grim's interests in Rosemead on those terms."

Between 1980 and 1988, the partnership was managed by Sanders, as the sole remaining general partner. In 1981, Sanders and Eigenbrodt entered into an assignment agreement. Through the agreement Sanders agreed to "sell[], transfer[] and assign[] to Robert Eigenbrodt one-half [of his] 'financial interest'" in the partnership. Eigenbrodt acquired half of Sanders' "financial interest" in Sanders' general partner interest for $20,000. The term "financial interest" was defined as "the right of the undersigned to receive any compensation, payment or distribution in money from the [partnership] on account of management fees, income distributions, or distributions on the sale of any property or assets of the [partnership]." The agreement did not "include [Sanders'] duties or obligations as a general partner of the [partnership]" and the assignment was "not intended to . . . constitut[e] a sale, transfer or assignment of the undersigned's general partnership interest . . . in the

[partnership], as such cannot lawfully be accomplished without the consent of the limited partners." Sanders conveyed to Eigenbrodt his agreement that he would "'make every effort to have the Limited Partners accept you as a full General Partner.'"[2]

In 1987, Sanders wrote to attorney Marcus E. Crahan, Jr., asking him to compose a letter to the limited partners about the desirability of adding Eigenbrodt as a general partner. The letter stated, "As you are aware, I have long wanted to have Bob Eigenbrodt join me as a General Partner. . . . However, it appears from the agreement that we must go to the Limited Partners and ask their approval to bring in Bob as a General Partner." Pursuant to Sanders' request, Attorney Crahan prepared an amendment to the certificate of limited partnership and a consent to amendment to certificate and agreement of limited partnership.

The amendment to the limited partnership agreement stated that it "hereby amends, said Certificate and Agreement of Limited Partnership in the following respects and no others:" Section 5.10, entitled "'General Partners,'" was amended to read, "'General Partners' shall refer to David L. Sanders and Robert Eigenbrodt." Section 7.1, entitled "'General Partners'" was amended to read: "David L. Sanders and Robert Eigenbrodt shall be the General Partners and have their principal place of business at the offices of Stor-Mor Self Storage, 8635 East Valley Boulevard, Rosemead, California 91770." The amendment further provided:

> "Notwithstanding anything in this Amendment or in the original Certificate and Agreement of

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[2] Eigenbrodt was a limited partner.

Limited Partnership, nothing contained herein shall be construed as creating a right in Eigenbrodt to any compensation, profits or proceeds other than that to which Sanders is now, and will in the future be, entitled. In other words, David L. Sanders and Robert Eigenbrodt shall equally share the compensation, profits and proceeds of the General Partners the same as if only one of them were a general partner."

The amendment further provided:

"In the event of the death or disability of either David L. Sanders or Robert Eigenbrodt, the remaining General Partner shall have all of the rights, duties, obligations and liabilities of the General Partners and shall be empowered to continue the partnership and to act [sic] the sole General Partner in the place and stead of the deceased or disabled partner."

Accompanying the ballot seeking approval of the proposed amendment was a letter sent to each of the limited partners advising them that by accepting the agreement, "you do not change your relationship to the partnership or your financial share. You will get the benefit of two general partners for the cost of one."

In 1988, the limited partners approved the amendment to the partnership agreement that increased the general partners to two people and added Eigenbrodt as a co-general partner.[3]

Sanders' and Eigenbrodt's purported assignments

In 1999, Eigenbrodt purported to assign his partnership interest (general and limited) to the Eigenbrodt trust. The May 4, 1999 assignment read: "We hereby assign, transfer and convey our partnership interest in Rosemead Warehouse Partnership, a California Limited Partnership to R.A. Eigenbrodt and Doris Eigenbrodt, Trustees of the R.A. and Doris Eigenbrodt Family Trust dated March 17, 1999." This purported assignment was made without reference to section 17.1 of the partnership agreement, which prohibits the general partners from selling, transferring, assigning or otherwise disposing of their "interest as General Partners in the Partnership or in its capital, earnings, assets or property." Eigenbrodt's attorney provided notice to Sanders of the purported assignment. On May 7, 1999, Sanders signed a "Consent of General Partners," consenting to the assignment.

During trial, appellants introduced evidence that certain of the partnership's records reflect that the Eigenbrodt trust, and not Eigenbrodt personally, was a general partner. However, other documents reflected that Eigenbrodt individually, and not the Eigenbrodt trust, remained the general partner.

In 2010, Sanders and his wife Elizabeth S. Sanders also purported to transfer their partnership interest, general and limited, to their trust, the David L. Sanders and Elizabeth S. Sanders Inter Vivos Trust dated December 14, 2000 (Sanders Trust). As Sanders did, Eigenbrodt consented to Sanders'

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[3] Eigenbrodt also remained a limited partner.

purported transfer of interest to the Sanders Trust by signing a consent.

In 2012, Sanders wrote a letter to the limited partners advising that his son-in-law, Phillips, was prepared to take over his role as a co-general partner of the partnership with Eigenbrodt (referred to in the letter as "Bob" Eigenbrodt, the individual). Sanders asked that the limited partners formally approve his resignation and the addition of Phillips as a co-general partner. The limited partners approved the amendment to remove Sanders as a co-general partner and to add Phillips as a co-general partner. Eigenbrodt, in his capacity as limited partner, approved the amendment. In approving the amendment making Phillips a co-general partner, Eigenbrodt acknowledged that the two general partners of the partnership were Phillips and Eigenbrodt, in his individual capacity -- not as co-trustee of the Eigenbrodt trust. The partnership filed a form LP-2 with the Secretary of State reflecting the changes.

Events after the deaths of Sanders and Eigenbrodt

Sanders died in 2012 and Eigenbrodt died in January 2015. Attorney Crahan is also deceased.

After Eigenbrodt's death, Phillips exchanged a number of emails with William Eigenbrodt and Susan Eigenbrodt. These emails show that during that time, the parties appeared to believe that appellants were entitled to some form of compensation for Eigenbrodt's general partnership interest. However, over time, and "[a]pparently on the basis of new legal advice," Phillips disputed that the partnership owed anything to the Eigenbrodt trust as compensation for Eigenbrodt's general partnership interest. He advised the partnership that he was the sole general partner and that the entire 36 percent general

partner distributions should be made to him. Another form LP-2 was filed with the Secretary of State reflecting the change in general partners. In January 2016, Phillips and the partnership changed the Eigenbrodt's Schedule K-1 tax documents to effectuate the transfer of the Eigenbrodt's general partner interest to Phillips for no consideration.

PROCEDURAL HISTORY

On January 21, 2016, Eigenbrodt's heir and trustee Susan Eigenbrodt sued Phillips and the partnership on behalf of the Eigenbrodt trust for breach of contract, breach of fiduciary duties, conversion, estoppel, accounting, dissolution of partnership and declaratory relief. On February 18, 2016, the partnership cross-complained for declaratory relief against all three of the Eigenbrodt heirs and trustees (Susan, William, and Eric Eigenbrodt), claiming that Phillips owns the general partner interest and is the partnership's sole general partner. On July 6, 2016, the Eigenbrodt trust filed its first amended complaint, which added a cause of action for appointment of a receiver and new theories of liability for breach of contract and declaratory relief.

On March 26, 2018, the trial court approved the parties' stipulation for the appointment of Robert A. Meyers as referee under Code of Civil Procedure section 638. A trial was held on April 23 and 24, 2019.

On July 8, 2019, the referee issued his statement of decision in which the Eigenbrodts' claims were denied, finding that Eigenbrodt's transfer of his partnership interest to the Eigenbrodt trust was ineffective. The referee reasoned that the transfer was ineffective because the limited partners did not formally approve the transfer of the general partner interest, nor

did the partnership file an amendment to its certificate of limited partnership with the Secretary of State. It was noted that section 17.1 of the partnership agreement also prohibited general partners from transferring their general partnership interests.

It was further found that the 1988 amendment to the partnership agreement meant that Eigenbrodt's general partnership interest went to the remaining general partner upon Eigenbrodt's death so that the partnership could continue unaffected. In the absence of any amendment, section 21.3 of the partnership agreement would have "triggered certain rights in Eigenbrodt's heirs upon his death." However, it was determined that the 1988 amendment -- despite its language limiting its effect to certain provisions -- amended the rights of Eigenbrodt's heirs upon his death. In so concluding, the referee considered the factual events at the time, noting, "[t]he chronology here is important: Eigenbrodt became a co-general partner at the very same time that the Amendment was adopted. In essence, *he became a co-general partner subject to the Amendment* and for no additional consideration. He made no capital contribution to acquire the interest. In fact, Eigenbrodt voted in favor of the Amendment." The referee concluded that respondents were entitled to the relief they requested, "namely, that upon Eigenbrodt's death his general partnership interest terminated and Phillips became the sole general partner of the Partnership."

Following hearing on a noticed motion for entry of judgment based on the decision of referee pursuant to Code of Civil Procedure section 644, subdivision (a), the trial court signed the judgment on September 18, 2019.[4]

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[4] All further references to the July 8, 2019 Statement of Decision issued by the referee will be as though issued by the

DISCUSSION

Appellants raise three claims on appeal. First, they argue that the trial court wrongly interpreted the partnership agreement by finding that the 1988 amendment prevailed over section 21.3 of the original partnership agreement. Second, appellants contend that the trial court erred in determining that Eigenbrodt's purported transfer of his general partner interest to the Eigenbrodt trust was ineffective, and that the Eigenbrodt trust was not a general partner at the time of Eigenbrodt's death. Finally, appellants claim that the trial court erred in determining that the Eigenbrodt trust did not establish its causes of action for damages and relief against Phillips and the partnership.

I. Applicable law and standards of review

A. General principles

"The interpretation of a contract is a judicial function. [Citations.] In engaging in this function, the trial court 'give[s] effect to the mutual intention of the parties as it existed' at the time the contract was executed. [Citation.] Ordinarily, the objective intent of the contracting parties is a legal question determined solely by reference to the contract's terms. [Citation.]" (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1125-1126.) While the court generally may not consider extrinsic evidence, extrinsic evidence is admissible to interpret an agreement when a material term is ambiguous. (*Ibid.*)

Thus, the interpretation of a contract involves a two-step process. (*Brown v. Goldstein* (2019) 34 Cal.App.5th 418, 432.) "'First the court provisionally receives (without actually

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trial court pursuant to Code of Civil Procedure section 644, subdivision (a).

admitting) all credible evidence concerning the parties' intentions to determine "ambiguity," i.e., whether the language is "reasonable susceptible" to the interpretation urged by a party.'" (*Id.* at pp. 432-433.) If, considering such extrinsic evidence, the language at issue is ""reasonably susceptible"" to the interpretation urged by a party, the extrinsic evidence is admitted to assist with the second step in the process -- interpretation of the contract. (*Id.* at p. 433.)

"'When there is no material conflict in the extrinsic evidence, the trial court interprets the contract as a matter of law.'" (*Brown v. Goldstein, supra,* 34 Cal.App.5th at p. 433.) "If, however, there is a conflict in the extrinsic evidence, the factual conflict is to be resolved by the [factfinder]." (*Ibid.*)

A trial court's ruling on the threshold question of ambiguity is reviewed as a matter of law. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165 (*Winet*).)

"The second step -- the ultimate construction placed upon the ambiguous language -- may call for differing standards of review, depending upon the parol evidence used to construe the contract." (*Winet, supra,* 4 Cal.App.4th at pp. 1165-1166.) "When the competent parol evidence is in conflict, and thus requires resolution of credibility issues, any reasonable construction will be upheld as long as it is supported by substantial evidence." (*Id.* at p. 1166.) "However, when no parol evidence is introduced, . . . or when the competent parol evidence is not conflicting, construction of the instrument is a question of law." (*Ibid.*)

B. Application to this case

In deciding the issues presented by the parties, the trial court addressed mixed issues of fact and law.

The first issue was the effectiveness of Eigenbrodt's purported transfer of his partnership interest to the Eigenbrodt trust. In determining that the transfer was ineffective, the court considered the language of various provisions of the agreement, including those provisions that would have required formal approval by the limited partners and an amendment to the partnership agreement.[5] The interpretation of these provisions does not appear to be in controversy. However, in determining the validity of appellants' claims, the court also considered factual evidence such as the parties' failure to take actions to formalize the purported transfer, as well as documents later signed on behalf of the general partners. The court noted that these documents conflicted -- some reflected that the Eigenbrodt trust, and not Eigenbrodt personally, was a general partner. However, when Sanders stepped down and Phillips was added as a general partner, the operative document approving these actions lists Eigenbrodt in his individual capacity as a general partner. The trial court's resolution of these conflicting facts and inferences concerning the effectiveness of the purported transfer must be reviewed under the substantial evidence standard. (*Winet, supra,* 4 Cal.App.4th at p. 1166.)

In determining that the 1988 amendment prevailed over section 21.3 of the partnership agreement, the court first considered the language of the agreement and noted a conflict between the language of the two disputed provisions. The court acknowledged a conflict -- and therefore an ambiguity -- by stating that appellants were correct to point out that in the absence of the amendment, "section 21.3 . . . would have triggered

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[5] The trial court cited sections 5.12 and 23.3 of the partnership agreement.

certain rights in Eigenbrodt's heirs upon his death and that [respondents'] conduct would be actionable." The trial court's explicit acknowledgement of this ambiguity created by the 1988 amendment is reviewed as a matter of law.

In resolving the ambiguity created by the 1988 amendment, the trial court considered extrinsic evidence. For example, the trial court relied on the timeline of events, such as Eigenbrodt's decision to become a general partner subject to the amendment. The trial court also considered the parties' conflicting interpretations of the inferences created by Eigenbrodt's actions at the time he became a general partner. Appellants argued that Eigenbrodt was added as a general partner in furtherance of his already -- existing one-half financial interest in the general partnership. However, the trial court accepted respondents' view that Eigenbrodt accepted the role of general partner for no additional consideration. The parties also disagreed as to the purpose and effect of the June 8, 1988 letter sent by Sanders to Eigenbrodt and the other limited partners. While appellants suggest that the language of the letter, which stated "By accepting this agreement you do not change your relationship to the partnership or your financial share," meant that Eigenbrodt did not change his existing financial share in the general partnership, respondents argue that the letter was intended only to reference Eigenbrodt's limited partnership interests, as he was not a general partner at the time of the letter. The trial court resolved these conflicting factual inferences drawn from the facts in reaching its decision. We review the trial court's factual resolutions under the substantial evidence standard. (*Winet, supra,* 4 Cal.App.4th at p. 1166.)

II. The 1988 amendment

A. The conflicting provisions

The 1988 amendment added the following language to the partnership agreement:

> "In the event of the death or disability of either David L. Sanders or Robert Eigenbrodt, the remaining General Partner shall have all of the rights, duties, obligations and liabilities of the General Partners and shall be empowered to continue the partnership and to act [sic] the sole General Partner in the place and stead of the deceased or disabled General Partner."

This language, which was added at the time Eigenbrodt became a general partner, granted to the remaining general partner all of the rights of the deceased general partner at the time such general partner died or became disabled. The language of the 1988 amendment contradicted section 21.3 of the agreement, which called for an appraisal of the general partner's interest, along with a payment or conversion to a limited partner interest:

> "Upon the retirement, withdrawal, removal, dissolution, insolvency, or bankruptcy (or death or insanity, in the case of an individual General Partner) of the General Partners, or any of them, and the continuation of the Partnership (any of these events being hereinafter referred to in this Section 21.3 as a 'termination') . . . there shall be determined the then present fair market value of the terminated General Partner's interest. . . . Upon the determination of the present value of the terminated

> General Partner's interest, the Partnership forthwith either shall (a) pay to the terminated General Partner in cash an amount equal to one-hundred percent (100%) of the present fair market value of the interest so determined, . . . or (b) convert the interest as determined above of the terminated General Partner to a limited partner's interest in the ratio that the value of the terminated General Partner's interest bears to the value of all Partners' interests as of the appraisal date."

B. The conflicting provisions rendered the partnership agreement reasonably susceptible to different interpretations

The two provisions, both of which concern a general partner's rights upon death or disability, conflict. Such conflicting language creates an ambiguity. (See, e.g., *Jordan v. Allstate Ins. Co.* (2004) 116 Cal.App.4th 1206, 1212 [ambiguity created by conflicting contract provisions].)

As set forth above, the trial court recognized this ambiguity by explaining that, had the 1988 amendment to the agreement not been made, appellants would have enforceable rights against the partnership. We find that the trial court did not err in recognizing this ambiguity and considering extrinsic evidence to resolve it.

C. The record supports the trial court's resolution of the ambiguity

Having concluded that the partnership agreement is reasonably susceptible to the differing interpretations advocated by the parties, we now address the second step -- interpreting the contract. (*Brown v. Goldstein, supra,* 34 Cal.App.5th at p. 437.)

As set forth above, the trial court considered the language of the provision as well as the parties' conflicting views of the extrinsic evidence. While the parties to the agreement are now deceased, their actions create factual inferences regarding their intentions. The court considered factual evidence, and the inferences regarding the parties' understandings to be drawn from that evidence, in reaching its conclusion. The evidence in the record supports the trial court's conclusion that the 1988 amendment superseded any rights that Eigenbrodt had under section 21.3 of the original partnership agreement.

The court first focused on the timeline of events. It noted that any interpretation of the 1988 amendment that would keep intact the pre-amendment language of section 21.3 would be inconsistent with the amendment and essentially excise it. The court thus made a factual conclusion that the amendment, which was made simultaneously with Eigenbrodt's acceptance of the general partner position, was a more accurate reflection of the parties' intention than the original agreement, formed between different individuals, 10 years earlier.[6] The court also considered Eigenbrodt's actions at the time he accepted the general partner position and corresponding amendment. At that time, Eigenbrodt made no additional capital contribution to acquire the general partner position. Instead, "*he became a co-general partner subject to the Amendment* and for no additional

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[6] The court also relied on Civil Code section 1638 ["The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity"], and Civil Code section 1641 ["The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other"].)

consideration. He made no capital contribution to acquire the interest." This fact supports the inference the trial court made: that Eigenbrodt intended to be bound by the language of the 1988 amendment, and did not at that time anticipate acquisition of financial reward for his change of position.

The trial court also considered the letter written to the limited partners -- including Eigenbrodt -- asking them to formally consent to the 1988 amendment. The trial court noted that this document was significant to its analysis of the inferences to be drawn from the available facts. The court explained, "in the same time frame, the limited partners of Rosemead -- including Eigenbrodt -- were asked to formally consent to the Amendment. Eigenbrodt, along with the other limited partners, signed the consent, thereby approving the amendment to the agreement, as described above." The trial court's description of the letter reflects an implicit factual finding that the letter was directed only towards the limited partners, and not to Eigenbrodt in his capacity as general partner.[7] In fact, as respondents point out, Eigenbrodt was not a general partner until he signed the acceptance of the amendment enclosed with the letter. Thus, the language of the letter, stating "By accepting this agreement you do not change your relationship to the partnership or your financial share," reflected only that Eigenbrodt did not change his limited partner status or financial share. This inference is well supported in the record, particularly because, under sections 5.12 and 23.3 of the agreement, only

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[7] We will imply any factual findings necessary to support the judgment even if the trial court failed to explicitly include such finding in its statement of decision. (*Orange County Water Dist. v. Alcoa Global Fasteners, Inc.* (2017) 12 Cal.App.5th 252, 313.)

limited partners were permitted to vote to amend the partnership agreement.

Appellants argued to the trial court that the preamble to the 1988 amendment specified that it "hereby amends said Certificate and Agreement of Limited Partnership in the following respect *and no others*" (emphasis added) and then mentioned only sections 5.10 and 7.1. In addressing this argument, the trial court considered other provisions of the agreement which rendered the quoted language of the preamble "indisputably" inaccurate. For example, section 21.2, which addressed the continuation of the partnership upon the death, withdrawal or resignation of a general partner, required a vote of the limited partners as to whether to continue the partnership. Because the 1988 amendment provided that upon the death or disability of either Eigenbrodt or Sanders, "'the remaining General Partner . . . shall be empowered to continue the partnership,'" section 21.2 was plainly affected by the amendment, although not specifically addressed in the preamble to the 1988 amendment. At trial, counsel for appellants acknowledged that the 1988 amendment changed provisions outside of the two specifically mentioned in the preamble.[8] The trial court's conclusion that the preamble to the amendment was

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[8] The exchange between the referee and appellants' counsel was as follows:

"Referee: But it still change -- it -- even under -- even reading them together, it's still changing 21.2.

"Appellants' counsel: I agree.

"Referee: That's the problem. In other words, if it's changing it, then as Mr. Leonard says, it didn't recite that it's changing it and we may have some really sloppy lawyering.

"Appellants' counsel: Correct."

inaccurate, and a result of "sloppy lawyering," is supported both by the evidence that other sections were affected, and by appellants' counsel's concession.

The trial court's interpretation of the 1988 amendment, based on its resolution of factual inferences derived from the available evidence, is supported by substantial evidence in the record. Appellants raise alternative factual inferences that could have been derived from the evidence, however, under the substantial evidence standard, we determine whether there is substantial evidence in the record, contradicted or uncontradicted, to support the trial court's decision. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) The evidence supports the trial court's factual conclusion that the parties intended the 1988 amendment to supersede section 21.3.

D. The amendment need not be interpreted to avoid forfeiture

Appellants argue that "[f]orfeitures are not favored by the courts, and if an agreement can be reasonably interpreted so as to avoid a forfeiture, it is the duty of the court to avoid it." (*Nelson v. Schoettgen* (1934) 1 Cal.App.2d 418, 423.) Appellants emphasize that a contractual provision resulting in forfeiture must be strictly construed, and "a forfeiture can never take place by implication, but must be effected by express, unambiguous language." (*Cullen v. Sprigg* (1890) 83 Cal. 56, 64.) Appellants argue that the same is true here, and the trial court's conclusion that Eigenbrodt agreed to forfeit a valuable economic interest in the general partnership for no compensation was erroneous.

In support of their argument, appellants cite several cases, all of which involved the forfeiture of significant property rights. (*Ballard v. MacCallum* (1940) 15 Cal.2d 439, 440 [reconveyance

of the corpus of a trust estate]; *ABI, Inc. v. City of Los Angeles* (1984) 153 Cal.App.3d 669, 675-676 [recovery of fees deposited with the city in connection with a home mortgage bond program]; *Universal Sales Corp. v. Cal. Etc, Mfg. Co.* (1942) 20 Cal.2d 751, 756 [interest in a pellet press for animal feed].) In contrast, here, Eigenbrodt was not a general partner at the time he agreed to the amendment. Therefore, prior to agreeing to the amendment, Eigenbrodt had no interest in the section 21.3 benefits. He cannot have forfeited rights that he did not possess. As the trial court pointed out, Eigenbrodt became a co-general partner subject to the amendment. To read the amendment as superseding section 21.3 does not deprive Eigenbrodt of any interest he previously held pursuant to section 21.3. Therefore, the forfeiture rule set out in the caselaw provided by appellants is not applicable.

Appellants argue that the 1988 amendment must be read in connection with the 1981 purchase agreement, through which Eigenbrodt purchased a portion of Sanders' "financial interest" in the partnership without conferring upon Eigenbrodt any actual general partner interest. However, there is no evidence in the record suggesting that the 1988 amendment was connected to Eigenbrodt's purchase of a financial interest seven years earlier. In fact, the express language directed to the limited partners in connection with the amendment strongly conveys that Eigenbrodt was not gaining any financial interest at that time. The limited partners were expressly informed that "[b]y accepting this agreement you do not change your relationship to the partnership or your financial share. [The limited partners] will get the benefit of two general partners for the cost of one." In order to assure that the addition of a co-general partner would

not affect the distributions to the limited partners at any time, the amendment read, in part: "Notwithstanding anything in this Amendment or in the original Certificate and Agreement of Limited Partnership, nothing contained herein or therein shall be construed as creating a right in Eigenbrodt to any compensation, profits or proceeds other than that to which Sanders is now, and will in the future, be entitled." It further specified that in the event of the death or disability of either Eigenbrodt or Sanders, "the remaining General Partner shall have all of the rights, duties, obligations and liabilities of the General Partners and shall be empowered to continue the partnership . . . ." This language supports the trial court's interpretation of the amendment. If, upon the death of one of the general partners, the partnership was required to purchase or convert that general partner's interest to a limited partnership interest, it would, contrary to this express language, place an additional financial burden on the partnership.

The 1988 amendment created an ambiguity because it conflicted with the language of section 21.3. Both parties have presented conflicting factual inferences derived from the available facts to advocate their interpretations of the parties' intentions. Following trial, the trial court relied upon substantial evidence and factual inferences in determining that respondents' interpretation should prevail. Because the evidence supports that interpretation, we find no error.

III. The Eigenbrodt trust

A. Substantial evidence supports the trial court's decision

Appellants next argue that the trial court erred in concluding that the Eigenbrodt trust was not a general partner at

the time of Eigenbrodt's death. Appellants inaccurately describe the extrinsic evidence on this point as undisputed. While some partnership documents reflected the Eigenbrodt trust as a general partner, other documents continued to reflect Eigenbrodt in his individual capacity as general partner. Significantly, when Sanders stepped down in 2012 and sought to have his son-in-law replace him, the operative document approving these actions referenced Eigenbrodt individually as a general partner, not the Eigenbrodt trust. Thus, the evidence was conflicting. The trial court's resolution of this factual conflict was based largely on the fact that the limited partners never approved of the purported transfer of Eigenbrodt's general partnership interest to the Eigenbrodt trust, and that the partnership did not file an amendment to its certificate of limited partnership with the California Secretary of State. Both actions would have been necessary in order for Eigenbrodt's purported transfer of his general partnership interest to the trust to be effective. Because substantial evidence in the record supports the trial court's determination that the Eigenbrodt trust was not a general partner, we decline to reverse the court's decision.[9]

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[9] We note that Sanders' action of seeking election of his son-in-law to replace him as general partner suggests that Sanders understood that his own purported transfer of his general partner interest to his trust was ineffective to make his trust a general partner. Sanders purported to transfer his general partner interest to his trust in 2010. In 2012, when he became ill, instead of relying on the continued existence of his trust to remain general partner, Sanders chose to preserve his family's interest in the general partnership by successfully having his son-in-law, Phillips, elected a general partner.

B. Defenses of laches, estoppel and violation of the statute of limitations

Appellants argue that their defenses of laches, estoppel, and violation of the statute of limitations bar the partnership's claim that the Eigenbrodt trust is not a general partner.[10] Appellants initially argue that the trial court failed to resolve these defenses, therefore at a minimum, this court should remand this matter to the trial court to consider the evidence regarding these defenses. However, appellants fail to point to the record to confirm showing that they raised this issue in response to the trial court's statement of decision.

The doctrine of implied findings compels us to find that the trial court found against appellants on their laches, estoppel, and statute of limitations defenses. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.) The doctrine of implied findings is based on three "fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error." (*Ibid.*) Thus, following a hearing pursuant to Code of Civil Procedure section 632, in order to affirmatively prove error, the appellant must not only secure a statement of decision, but also bring any ambiguities or omissions in the statement of decision to the

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10 Appellants assert that Code of Civil Procedure section 337, which provides a four-year limitation period for an "action upon any contract, obligation or liability founded upon an instrument in writing," is applicable. Appellants argue that the limitation period commenced in 1999 when Eigenbrodt purportedly made the assignment, and expired in 2003.

referee or trial court's attention. (*Fladeboe v. American Isuzu Motors Inc.,* at pp. 58-59.) "[I]f a party does not bring such deficiencies to the trial court's attention, that party waives his right to claim on appeal that the statement was deficient in these regards, and hence the appellate court will imply findings to support the judgment." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134.) Because appellants have failed to show that they brought the omissions they now assert on appeal to the attention of the referee or trial court, we infer implicit findings against them.

Further, the evidence in the record supports the trial court's implicit determination that appellants' defenses cannot prevail. All three of the defenses require some form of knowledge on the part of the party who has delayed assertion of a right. In this case, there is no indication that the limited partners, or Phillips, were aware of the Eigenbrodt trust's claim that it should be considered a general partner.[11] This is supported by the fact that the limited partners never voted to approve the Eigenbrodt trust as a limited partner, and the certificate of limited partnership was never formally amended to add the Eigenbrodt trust as a limited partner.

To establish laches, appellants were required to show "'(1) delay in asserting a right or a claim; (2) the delay was not reasonable or excusable; and (3) prejudice.'" (*In re Marriage of*

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[11] Phillips testified as follows:
"Q: When did you first become aware that the Eigenbrodt family was making a claim that the trust was the general partner and not Bob Eigenbrodt?
"A: Well, it had to be after his death, it became obvious that they were making a claim."

Parker (2017) 14 Cal.App.5th 681, 688.) The evidence supports a finding that the partnership acted reasonably in failing to challenge the purported transfer of general partner interest to the Eigenbrodt trust earlier, as the transfer was never formalized and its claim to the rights of a general partner was never previously brought to the partnership's attention.

To establish estoppel, the party asserting the defense must establish four elements: "'"'(1) the party to be estopped must be apprised of the facts; (2) [it] must intend that [its] conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) [the other party] must rely upon the conduct to [his or her] injury.' [Citations.]"' [Citation.]" (*Southern Cal. Edison Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 1086, 1110.) Again, there is evidence in the record to support a factual finding that the limited partners were never apprised of the Eigenbrodt trust's claim that it had been assigned all of Eigenbrodt's rights as a general partner.

Any claim that the statute of limitations bars respondents from denying that the Eigenbrodt trust was a general partner also fails. Under the discovery rule, the statute of limitations does not begin to run until a plaintiff has notice of the wrongdoing. (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 642.) The evidence in the record supports an implied finding that the limited partners, and Phillips, had no notice of the Eigenbrodt trust's claim to be general partner until after Eigenbrodt's death in 2015. The pleadings in this matter were filed in 2016.

Appellants assert that Sanders had notice of the purported transfer of Eigenbrodt's partnership interest to the Eigenbrodt trust. However, the facts are conflicting as to whether Sanders knew that the Eigenbrodt trust claimed the purported transfer was effective to transfer Eigenbrodt's full general partnership interest. While Sanders also purported to transfer his own general partnership interest to his trust, he later appeared to acknowledge that any such transfer was ineffective. First, Sanders ensured that his individual general partnership interest formally passed to his son-in-law, Phillips. Further, in carrying out the formal transfer of his general partner interest to Phillips, Sanders treated Eigenbrodt, individually, as his co-general partner. Eigenbrodt did not object. Thus, substantial evidence in the record supports the trial court's implied finding that Sanders did not have notice that Eigenbrodt took the position that a legally effective transfer of Eigenbrodt's general partnership interest had occurred.

Appellants cite *Casualty Ins. Co. v. Rees Investment Co.* (1971) 14 Cal.App.3d 716, 720 (*Casualty*), for the proposition that respondents had a duty to investigate and discover the facts that appellants now assert. As set forth in *Casualty*, "when the plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation (such as public records or corporation books), the statute commences to run." (*Ibid.*) However, the corporate records here did not reflect a formal transfer of Eigenbrodt's partnership interest. In order to reflect such a transfer, a vote of the limited partners and amendment to the partnership agreement were required. At best, there was conflicting information in the corporate records as

to whether an effective transfer of Eigenbrodt's partnership interest had occurred, and substantial evidence supported the trial court's implicit determination that the corporate records were insufficient to put respondents on notice of the present claims of the Eigenbrodt trust.

IV. The court did not err in determining that the Eigenbrodt trust's claims against respondent fail

Susan Eigenbrodt, as trustee of the Eigenbrodt trust, brought the trust's claims against respondents for breach of contract, breach of fiduciary duties, conversion, estoppel, accounting, dissolution of partnership and declaratory relief. The trial court addressed these causes of action as follows:

> "The fulcrum of each of plaintiff's claims is that either the [Eigenbrodt] Trust became a co-general partner by way of assignment, and is therefore still a general partner, or alternatively, that Eigenbrodt remained a general partner at the time of his death and his rights under the [partnership agreement] have been violated. Since I have concluded that plaintiff has not met its burden in proving either of those predicates, plaintiff is not entitled to relief under any of the causes of action asserted."

Appellants assert that the trial court erred in reaching this conclusion. For the reasons set forth below, we disagree, and affirm the trial court's decision.

As to the claim for breach of contract, it is premised on a breach of section 21.3. As explained in detail above, the trial court did not err in determining that the 1988 amendment to the partnership agreement superseded section 21.3. Thus, appellants' claim for breach of contract fails.

As to the claim for breach of fiduciary duties, it is premised on Phillips' alleged failure to act with the highest degree of good faith and his efforts to seek to obtain advantage in the partnership by misconduct. However, Phillips and the partnership have prevailed on their claims in this lawsuit. Appellants have failed to show lack of good faith or wrongdoing.

The Eigenbrodt trust's claim for conversion is based on appellants' disproved position that the Eigenbrodt trust owns a general partner interest in the partnership. Because that premise is incorrect, this cause of action fails.

The Eigenbrodt trust's claim for estoppel is premised on the position that the partnership should be estopped from denying the Eigenbrodt trust's general partnership interest. For the reasons set forth in detail above, the evidence supported a factual finding that the partnership was not put on notice that a formal transfer of Eigenbrodt's general partnership interest had occurred. Under the circumstances, the claim for estoppel fails.

In support of the cause of action for accounting, the Eigenbrodt trust's claims that the Eigenbrodt trust continues to have a general partnership interest in the partnership, and that Phillips and the partnership stole, and continue to owe, the Eigenbrodt trust cash and distributions. As set forth above, the evidence in the record supports the trial court's decision that the Eigenbrodt trust never obtained a general partnership interest in the partnership. Therefore, the claim for accounting fails.

The Eigenbrodt trust's claim for dissolution of partnership is based on Corporations Code section 15908.02, subdivision (a), which provides that upon application of a partner, a court may order dissolution of a partnership if it is not reasonably practicable to carry on the activities of the partnership. The

Eigenbrodt trust claims it is not reasonably practicable to carry on the partnership due to respondents' actions in disclaiming the general partner interests of the Eigenbrodt trust, improper use of the partnership's assets, and manipulation of the partnership's records. Because we affirm the trial court's determination of the underlying issues in favor of respondents, this claim also fails.

In the cause of action for declaratory relief, the Eigenbrodt trust sought a declaration that the Eigenbrodt heirs own the entirety of the general partnership interest and Phillips does not own any such interest. This claim is unsupported by the record. Appellants have failed to show that the trial court erred in determining that the 1988 amendment prevailed over section 23.1 and that the Eigenbrodt trust never effectively became a general partner of the partnership.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT